

SENATE BILL 27 of the First Extraordinary Session  
By Haun

AN ACT to amend Tennessee Code Annotated, Title 9; Title 45;  
Title 48; Title 56; Title 57; Title 61; Title 62; Title 67 and  
Title 68; to enact the "Tax Reform Act of 1999".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-804(a) is amended by adding the following as a new, appropriately designated subdivision:

( ) "Pass-Through Entity" means a partnership, limited liability company or any other entity or person which is not subject to tax pursuant to this part.

SECTION 2. Tennessee Code Annotated, Section 67-4-804(a)(7) is amended by deleting the subdivision from the beginning of the subdivision through the end of subitem (B); by redesignating subsequent subdivisions accordingly and by substituting instead the following:

(7) "Doing business in Tennessee" or "doing business within this state" means any activity purposefully engaged in, within Tennessee, by any business entity named in §§ 67-4-806 and 67-4-903, with the object of gain, benefit, or advantage, consistent with the intent of the general assembly to subject such entities to the Tennessee franchise, excise tax to the extent permitted by the United States Constitution and the Constitution of the state of Tennessee. A business entity shall be considered to be "doing business in Tennessee" or "doing business within this state" for purposes of this part and part 9 of this chapter if it owns an ownership interest in a pass-through entity which is doing business in Tennessee; provided, that any such business entity shall not be considered

to be "doing business in Tennessee" or "doing business within this state" for purposes of this part and part 9 solely because of any one (1) of the following activities:

SECTION 3. Tennessee Code Annotated, Title 67, Chapter 4, Part 8, is amended by adding the following new section:

Section \_\_\_\_\_. (a) If the tax computation, allocation or apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity in this state, or the taxpayer's net earnings, the taxpayer may petition for, or the department of revenue through its delegates may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one (1) or more of the formula factors;
- (3) The inclusion of one (1) or more additional apportionment formula factors which will fairly represent the taxpayer's business activity in this state; or
- (4) The employment of any other method to effectuate an equitable computation, allocation and apportionment of the taxpayer's net earnings or losses that fairly represents the extent of the business entity's activities in Tennessee.

(b) If any factors are excluded from or added to the statutory apportionment formula, an appropriate change shall be made in the number used as the denominator of the fraction.

(c) (1) In any case of two or more persons, organizations, trades or businesses (whether or not incorporated and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the commissioner through delegates may distribute, apportion, or allocate income, deductions, credits, or allowances between or among such persons, organizations, trades or businesses, if the commissioner determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes, excessive use or abuse of exemptions, or to clearly to reflect the income of such

persons, organizations, trades or businesses. In addition, the commissioner through delegates may require combined reports utilizing a common apportionment formula covering members of an affiliated group of corporations.

(2) The commissioner may disregard any entity created or transaction made which has no business purpose or is created or made with the primary purpose of evading either the federal income tax or the excise tax.

(3) For purposes of this subsection, "affiliated group" has the same meaning attributed to it by section 1504 of the internal revenue code.

(d) When another method of tax computation, allocation or apportionment as set out above has once been established, it shall continue in effect until changed or discontinued by the department. In the event that the department changes or discontinues a taxpayer's method of tax computation, allocation or apportionment, reasonable notice shall be given to the taxpayer affected and any such change or discontinuation in the method of tax computation, allocation or apportionment shall apply prospectively to the first and subsequent tax periods beginning on or after the date of such notice.

SECTION 4. The provisions of this act shall be known and may be cited as the "Tax Reform Act of 1999".

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it.